

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
State Procurement Bureau  
165 Mitchell Building  
PO Box 200135  
Helena, MT 59620-0135  
Phone: (406) 444-2575 Fax: (406) 444-2529  
TTY Users-Dial 711  
<http://www.mt.gov/doa/gsd>

**T.C. #: SPB07-1408F**  
**Title: Microsoft Reseller Services**  
**This is a exclusive contract.**

CONTRACT TERM	FROM	October 1, 2006	CONTRACT STATUS	NEW (x)
	TO	September 30, 2009		RENEW ( )
VENDOR ADDRESS	Software House International Inc. 2 Riverview Drive Somerset NJ 08873		ORDER ADDRESS	
ATTN:	Shari Mendelson		ATTN:	
PHONE:	800-527-6389		PHONE:	
FAX:	732-868-6128		FAX:	
E-MAIL:	Shari_Mendelson@shi.com		E-MAIL:	

PRICES: Per Contract Agreement

DELIVERY: Per Contract Agreement

F.O.B.: Per Contract Agreement

TERMS: Per Contract Agreement

REMARKS:

IFB/RFP No.: RFP07-1408F

Floyd Willis, CONTRACTS OFFICER

DATE: 10/18/06

**AUTHORIZED SIGNATURE**

## Microsoft Reseller Services

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**1. PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are P.O. Box 200135, Helena, MT 59620-0135, (406) 444-2575, and Software House International, Inc., (hereinafter referred to as the "Contractor"), whose address and phone number are 2 Riverview Drive, Somerset, NJ 08873 and (800)-527-6389.

THE PARTIES AGREE AS FOLLOWS:

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect on October 1, 2006, (or upon contract execution) and terminate on September 30, 2009, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of 10 years.

**3. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

**4. EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is considered to be an "Exclusive" use contract and state agencies must obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, the State Procurement Bureau does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the contract. The Montana State Universities are not required to purchase goods and services from this contract. Universities may obtain this product/service from sources other than the contract holder.

**5. COST/PRICE ADJUSTMENTS**

**5.1 Cost Increase by Mutual Agreement.** After the initial term of the contract, each renewal term may be subject to a cost adjustment by mutual agreement.

**6. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to the Microsoft Reseller Services in accordance with the State's Microsoft Select Agreement 6.1.

**7. CONSIDERATION/PAYMENT**

**7.1 Payment Schedule.** In consideration for the Microsoft products to be provided, the State shall pay within 30 days upon receipt of properly executed invoice.

**7.2 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

**7.3 Purchasing Card.** The State of Montana has a Purchasing Card Program in place that gives agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

**8. TERM CONTRACT REPORTING**

Term contract holder(s) shall furnish reports of term contract usage as specified in Section 3.5 of the RFP.

**8.1 Monthly Reporting.** The Contractor must provide each individual State agency, local government or other authorized entity, with a monthly report of its purchases. The report must include the total number of licenses purchased categorized by the type of license. A monthly summary or roll-up of all purchases made under this contract must be provided to the ITSD Contract Liaison.

**8.2 Annual Reporting.** A summary of the same information is also required. Required fields in the report include: Department, Contact Name, Product, MS#, Product Description, Date, PO #, Invoice #, Unit Amount, Extended Amount. This report will be submitted to the ITSD Contract Liaison and to the State Procurement Bureau Contracts Officer.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

**9. ACCESS AND RETENTION OF RECORDS**

**9.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

**9.2 Retention Period.** The Contractor agrees to create and retain records supporting the acquisition and renewal of Microsoft software and software licenses for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

**10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

**11. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**12. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with the 2005 Montana Laws, chapter 448, section 1, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the Department of Administration Information Technology Services Division, upon expiration.

**13. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**14. CONTRACT TERMINATION**

**14.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

**14.2 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

**15. LIAISONS AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Michele Burchett will be the liaison for the State.  
910 Helena Ave.  
P.O. Box 2000116  
Helena, MT 59620-0116  
Telephone: (406) 444-0109  
Fax: (406) 444-4644  
E-mail: [MBurchett@mt.gov](mailto:MBurchett@mt.gov)

Shari Mendelson will be the liaison for the Contractor.  
2 Riverview Drive  
Somerset, NJ 08873  
Telephone: 800-527-6389  
Direct Line: 732-868-6127  
Fax: 732-868-6128  
E-mail: Shari\_Mendelson@shi.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

### **16. MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

### **17. CONTRACTOR PERFORMANCE ASSESSMENTS**

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

### **18. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

### **19. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

**20. SCOPE, AMENDMENT AND INTERPRETATION**

**20.1 Contract.** This contract consists of seven numbered pages, any Attachments as required, SPB07-1408F as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

**20.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

**21. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION  
FLOYD WILLIS  
STATE PROCUREMENT BUREAU  
PO BOX 200135  
HELENA MT 59620-0135**

**SOFTWARE HOUSE INTERNATIONAL INC.  
2 RIVERVIEW DRIVE  
SOMERSET, NJ 08873**

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

\_\_\_\_\_  
Legal Counsel (Date)

Agency: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Procurement Officer (Date)  
State Procurement Officer

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

\_\_\_\_\_  
Chief Information Officer (Date)  
Department of Administration